

## Contractor Agreement

This Agreement is made on 14<sup>th</sup> June 2010 (the "Effective Date")

### Between:

- (1) **The Game Creators Limited** (company number 03738984) whose registered office is at 4 Nancy View, Bollington, Cheshire, SK10 5QG, United Kingdom ("TGC"); and
- (2) **David Robitaille of 36 Humbert St. Springfield, MA 01109, USA** (the "Contractor" or his designee)

### 1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires, the following words have the following meanings:

<b>"Agreement"</b>	this agreement together with any of its Schedules;
<b>"VR Quest"</b>	means the computer software program or programs described in Schedule 3;
<b>"Deliverables"</b>	means the work so described in Schedule 1;
<b>"Intellectual Property Rights"</b>	includes (a) patents, trade marks, service marks, registered designs, applications and rights to apply for any of those rights, trade, business and company names, unregistered trade marks and service marks, copyrights, database rights, rights in designs and inventions and all rights in relation to any Internet domain names; (b) rights under licenses, consents, orders, statutes or otherwise in relation to a right in paragraph (a); (c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or at any time in the future may subsist in any territory of the world; and (d) the right to sue for past infringements of any of the foregoing rights;
<b>"Services"</b>	the services of the Contractor to be provided under this Agreement as set out in Schedule 1.

1.2 In this Agreement, unless the context otherwise requires:

- (a) words in the singular include the plural and vice versa and words in one gender include any other gender;
- (b) a reference to:
  - (i) a "**person**" includes any individual, firm, body corporate, association or partnership, government or state (whether or not having a separate legal personality);
  - (ii) "**clauses**" and "**schedules**" are to clauses and schedules of this Agreement and references to "**sub-clauses**" are references to sub-clauses of the clause in which they appear;
  - (iii) "**includes**" and "**including**" is to be construed without limitation; and
- (c) the headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

## 2. **Services**

- 2.1 The Contractor shall provide the Services at such times and places and in such manner as may be set out in Schedule 1 or otherwise as TGC and the Contractor may from time to time agree.
- 2.2 The Contractor shall provide TGC with regular (and no less than weekly) reports setting out the Contractor's progress in completing the Services and such additional information or work (including that set out in sub-clause 2.4) as TGC may from time to time reasonably require.
- 2.3 Time shall be of the essence of the Contractor's obligations in this clause 2.
- 2.4 The Contractor shall date and store in a secure location all of the work created by the Contractor in connection with the provision of the Services by the Contractor, including all drafts, work in progress, schematics, notes and diagrams, irrespective of whether the same are stored electronically or on any physical medium.

## 3. **Fees and Payment**

- 3.1 In consideration of the provision of the Services, TGC shall pay to the Contractor, upon receipt of an appropriate invoice, such sums on such dates that are set out in Schedule 2. In the event that the payment of any sum is conditional on the acceptance by TGC of any Deliverable, the Acceptance Procedures set out in Schedule 1 shall determine whether such Deliverable has been accepted by TGC.
- 3.2 TGC shall reimburse the Contractor in respect of all hotel, travelling and other out of pocket expenses approved in advance in writing by TGC and reasonably and properly incurred by the Contractor in the provision of the Services subject to the Contractor providing TGC with vouchers or other evidence of the Contractor's actual payment of such expenses as TGC may reasonably require.
- 3.3 Following the end of each month in which the Contractor incurs any approved expenses pursuant to sub-clause 3.2, the Contractor shall send TGC an

appropriate invoice in respect of such expenses. TGC shall pay all such expenses within 14 days of receiving such invoice from the Contractor.

- 3.4 The Contractor shall not be entitled to any additional compensation in connection with TGC's use and / or exploitation of the rights granted to TGC under this Agreement.

**4. Intellectual Property Rights and quality**

- 4.1 The Contractor assigns with full title guarantee to TGC (and by way of future assignment where necessary) all Intellectual Property Rights in the Deliverables absolutely for the full term during which such Intellectual Property Rights (including any renewals, extensions or revivals of such Intellectual Property Rights) shall subsist.

- 4.2 The Contractor waives absolutely and agrees never to assert any moral rights that he may have in the United Kingdom and, so far as it is legally possible, any broadly equivalent rights that he may have in any territory of the world.

- 4.3 The Contractor shall at the request and reasonable expense of TGC do such acts and execute such documents as TGC may reasonably require in order to effect or confirm or enforce the provisions of sub-clauses 4.1 and 4.2.

- 4.4 The Contractor represents, warrants and covenants to TGC that:

- (a) the Deliverables are (or shall be) original works, that they have not been (or will not be) copied wholly or substantially from any other work or material and that he owns all of the Intellectual Property Rights in all of the Deliverables on an exclusive, absolute and unencumbered basis;
- (b) he has the right to enter into this Agreement and to assign to TGC the Intellectual Property Rights in the Deliverables;
- (c) he has not entered into (and shall not enter into) any agreement or arrangement and has not done (and shall not do) any act or thing which shall (or might) inhibit, restrict or impair the free and unrestricted exploitation by TGC of the Intellectual Property Rights in the Deliverables;
- (d) nothing contained in the Deliverables is (or shall be) obscene, libellous or defamatory;
- (e) any of the Deliverables in electronic format is (and shall be) free from any material error, bug or virus; and
- (f) the use and exploitation by TGC of the Intellectual Property Rights in the Deliverables shall not infringe the Intellectual Property Rights of any person and TGC shall not incur any liability whatsoever in connection with the exploitation of the Deliverables.

- 4.5 The Contractor shall indemnify (and shall keep TGC fully indemnified) from and against all claims, demands, costs, liabilities, losses, expenses and damages (including legal fees and expert witness fees) arising out of or in connection with any claim which, taking the claimant's allegations to be true, would result in a breach by the Contractor of the representations, warranties or covenants set out in sub-clause 4.4.

## 5. Confidentiality

- 5.1 Except as provided in sub-clauses 5.2 and 5.3, each party undertakes to the other to keep confidential all information (written or oral) concerning the business or affairs of the other that it has received as a consequence of the discussions leading up to this Agreement or that it subsequently receives as a consequence of the performance of this Agreement ("Confidential Information"). Neither party shall use the Confidential Information of the other save as expressly permitted in this Agreement. Each party shall use the same degree of care that it uses to protect its own Confidential Information (and in no event less than reasonable care) to prevent the unauthorised disclosure or use of the other party's Confidential Information.
- 5.2 Each party may disclose Confidential Information to its legal, financial and other business advisors (in each case in so far as such advisors need to know such Confidential Information) or as may be required by law.
- 5.3 Sub-clause 5.1 shall not apply to Confidential Information which the receiving party can demonstrate was:
- (a) already in its possession prior to its receipt from the disclosing party;
  - (b) subsequently disclosed to it lawfully by a third party who did not obtain such Confidential Information (directly or indirectly) from the disclosing party; or
  - (c) in the public domain at the time of receipt by the receiving party or has subsequently entered the public domain other than as a result of a breach of sub-clause 5.1 by the receiving party.
- 5.4 Nothing in this Agreement will impair the right of either party to use, develop or market ideas or programs similar to those embodied in the Deliverables so long as such use, development or marketing does not infringe the Intellectual Property Rights of the other party.

## 6. Term and Termination of Appointment

- 6.1 This Agreement shall continue from the Effective Date until the Contractor has completed the provision of Services, or unless terminated earlier pursuant to this clause 6.
- 6.2 TGC may terminate this Agreement:
- (a) immediately upon written notice to the Contractor if the Contractor is in breach of any of his obligations under this Agreement and, if the breach is capable of remedy, it has continued unremedied for a period of 14 days after TGC has given notice to the Contractor specifying the breach and the steps required to remedy it; or
  - (b) for convenience, upon 4 weeks' written notice to that effect to the Contractor.
- 6.3 The Contractor may terminate this Agreement immediately upon written notice to TGC if:
- (a) TGC is in breach of any of its obligations under this Agreement and, if the breach is capable of remedy, it has continued unremedied for a

period of 30 days after the Contractor has given notice to TGC specifying the breach and the steps required to remedy it; or

- (b) TGC has a receiver or an administrative receiver appointed over it or over any part of its undertaking or assets or passes a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or if TGC becomes subject to an administrative order or enters into any voluntary agreement with its creditors or ceases or threatens to cease to carry on business.

6.4 The termination of this Agreement (however caused) shall;

- (a) be without prejudice to any other rights or remedies which either party may be entitled to under this Agreement or at law;
- (b) not affect any accrued rights or liabilities which either party may then have; and
- (c) not affect any term which expressly or by implication is intended to survive termination of this Agreement including clauses 4, 5, 6.4 and 8 which shall continue in force after such termination.

6.5 In the event that TGC terminates this Agreement in accordance with sub-clause 6.2 (b) TGC shall within 14 days of such termination pay to the Contractor all sums then due to the Contractor pursuant to this agreement together (if such termination occurs more than six weeks following the Effective Date) with such additional sum as TGC reasonably determines represents a fair proportion of the sums which would be due to the Contractor on completion of any Deliverables not yet completed by the Contractor but nevertheless delivered to TGC pursuant to sub-clauses 2.2 or 6.6. Save as set out in this clause 6.5 TGC shall have no liability to the Contractor arising out of or in connection with the termination by TGC of this Agreement pursuant to clause 6.2.

6.6 On termination of this Agreement the Contractor shall if so required by TGC deliver to TGC all of the work developed by the Contractor pursuant to this Agreement including all of the work described in sub-clause 2.4.

## 7. **Nature of the parties' relationship**

7.1 Nothing in this Agreement shall render the Contractor an employee, agent or partner of TGC and the Contractor shall not hold himself at as an employee, agent or partner of TGC. For the avoidance of doubt the Contractor shall not have the right or authority to assume or create any obligation on behalf of TGC or in the name of TGC.

7.2 The Contractor shall account for any income tax, Value Added Tax and social security contributions to the appropriate authorities.

7.3 The Contractor shall be solely responsible for acquiring and maintaining all equipment, premises and policies of insurance which may be necessary or desirable in connection with the performance of the Services. Subject to the other terms of this Agreement the Contractor shall be free to decide the hours, location and method of work provided always that:

- (a) such hours, method and / or location are consistent with the performance of the Contractor's obligations in this Agreement (and

for the avoidance of doubt nothing in this sub-clause 7.3 shall be deemed to amend the Contractor's obligations elsewhere specified); and

- (b) the Contractor uses best endeavours to attend any location specified by TGC at TGC's cost payable in accordance with sub-clause 3.2 at any reasonable time and for such reasonable period and purpose as TGC may specify if TGC reasonably considers that such attendance is necessary or desirable in order to complete the Deliverables.

7.4 In the event that TGC elects, in its sole discretion, to provide the Contractor with certain equipment, materials or software the Contractor shall at any time promptly upon demand return to TGC all such equipment, materials or software in the condition in which the same were first made available to the Contractor.

7.5 Subject to the obligations of the Contractor under this Agreement and to the obligation to avoid any conflict of interest, nothing in this Agreement shall prevent the Contractor from engaging in other art activities or any other business activities.

## 8. General

### 8.1 Notices

All notices, approvals and other communications to be given under this Agreement shall be in writing and shall be sent by first class post or facsimile (such facsimile notice to be confirmed by letter posted first class within twenty four hours of the transmission of the relevant facsimile) to the address of the other party set out at the commencement of this Agreement (or to such other address as either party may notify to the other under the provisions of this sub-clause).

### 8.2 Non-competition

The Contractor shall not during the term of this Agreement or for 6 months following termination of this Agreement be involved in the design and / or the development of a computer software program directly competing with the VR Quest Program.

### 8.3 Entire Agreement

This Agreement supersedes all prior representations, agreements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Agreement. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties. This clause shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Agreement which was induced by fraud for which the remedies available shall be all those available under applicable law.

### 8.4 Assignment and Sub-Contracting

The Contractor shall not assign any of its rights under this Agreement or the benefit and / or the burden of this Agreement to any person. The Contractor may not sub-contract any of its obligations under this Agreement without the prior written consent of TGC (such consent not to be unreasonably withheld).

In the event that the Contractor does sub-contract any of its obligations under this Agreement it shall first procure that each proposed contractor who will be involved in the provision of the Services or who will have access to any of TGC's Confidential Information will have signed, before beginning such involvement, an agreement with the Contractor including terms confirming all of the provisions of clauses 4 and 5 of this Agreement.

**8.5 No Waiver**

No failure on the part of either party to exercise or to enforce any right given to it by this Agreement or at law or any custom or practice of the parties at variance with the terms of this Agreement shall constitute a waiver of either of the parties' respective rights under this Agreement or operate so as to prevent the exercise or enforcement of any such right at any time.

**8.6 Set-off**

Notwithstanding any provision of this Agreement neither party will be prohibited from exercising any right of offset that may be available at law.

**8.7 Value Added Tax**

All sums due under this Agreement are exclusive of any applicable Value Added Tax or other sales tax and TGC shall pay any applicable Value Added Tax or other sales tax with the relevant sum at the rate and in the manner from time to time prescribed by law.

**8.8 Third Party Rights**

No term of this Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.


**8.9 Severability**

To the extent that any provision of this Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of this Agreement. However, this shall not affect the enforceability of the remainder of this Agreement nor shall it affect the validity, enforceability or lawfulness of that provision in any other jurisdiction.

**8.10 Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

**In witness** this Agreement has been executed on the date appearing at the head of page 1.

Signed by 

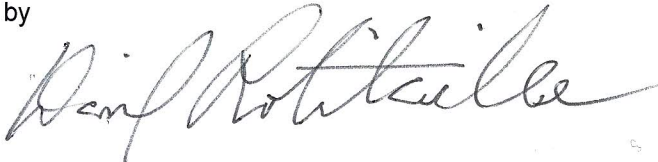
for and on behalf of The Game Creators Limited

Name *Mr Richard Vanner:*

Address: *4 Nancy View, Bollington, Cheshire, SK10 5QG*

Occupation: *Financial Director*

Signed by



Name: *David Robitaille*

Address: *36 Humbert St Springfield, MA 01109*

Occupation: *Musician*

## Schedule 1 - Services and Deliverables

### Services

The Contractor shall develop each of the Deliverables set out below and deliver the same to TGC in the format described below, on or before the dates set out below:

Deliverable	Date for Delivery	Format
<i>Milestone 1,2 and 3</i>	June 30 <sup>th</sup> 2010	Download

### Acceptance Procedures

After delivery of any Deliverable to TGC, TGC will have fourteen business days to examine and test that Deliverable to ensure that it conforms with all of the provisions of this Agreement and that it is, in the reasonable opinion of TGC, appropriate to be used by TGC.

TGC will on or before completion of such testing inform the Contractor of whether it accepts or rejects that Deliverable. If TGC rejects that Deliverable it shall at the same time provide the Contractor with a list of the reasons for such rejection and the Contractor shall at its own cost use diligent efforts to correct that Deliverable so that it conforms with all of the provisions of this Agreement and is otherwise deemed appropriate for use by TGC.

This procedure shall continue until either (a) TGC accepts the Deliverable, or (b) this Agreement is terminated (whichever is the earlier). No Deliverable shall be accepted or treated as accepted until such acceptance is unequivocally notified to the Contractor in writing. The Acceptance of any Deliverable shall not relieve the Contractor of any of its obligations under this Agreement or affect any of the Contractors' representations, warranties and covenants in this Agreement.

**Schedule 2 - Financial Provisions**

**PAYMENT AGAINST MILESTONES**

<b>Description</b>	<b>Payment</b>
<i>Acceptance of Milestone 1</i>	\$1,000 (5 mining music tracks @ \$200 each)
<i>Acceptance of Milestone 2</i>	\$1,000 (5 Egypt music tracks @ \$200 each)
<i>Acceptance of Milestone 3</i>	\$1,000 (5 Martian music tracks @ \$200 each)

**Schedule 3 - the Typing Tutor Games – deliverables**

**Milestone 1**

**5 Mining music tracks**

**Milestone 2**

**5 Egypt music tracks**

**Milestone 3**

**5 Martian music tracks**